IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

CRP.No. 1499 of 1999(E)

RCA.54/1996 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.35/1994 of RENT CONTROL COURT, KOZHIKODE-I

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REVN. PETITIONER/RESPONDENT/PETITIONER:

EDAVALATH KAITHAL KUNHABDULLA,
S/O. MAMEE HAJI, KUTTIADI AMSOM,
OORATH DESOM, VATAKARA TALUK.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
SRI.R.JAYAKRISHNAN
SRI.PRASANTH M.P

RESPONDENT/APPELLANT/RESPONDENT:

PEEDIKAKANDI MURALI, S/O. KUMARAN,
AGED 37, KALANTHINKUNNU AMSOM
AND DESOM, KOZHIKODE.

BY ADV. SRI.PHILIP ANTONY CHACKO

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/06/2007 ALONG WITH CRP NO.184 OF 2002, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.Nos. 1499 of 1999 & 184 of 2002

COMMON ORDER

Balachandran, J.

The petitioner and the respondent in both these revision petitions are the same. Both the revisions are filed by the landlord. **C.R.P.No.1499/99** arises out of R.C.P.No.35/94, wherein the petitioner sought for eviction of the respondent/tenant on the ground of arrears of rent attracting Section 11 (2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). His case was that Item No.1 scheduled to the rent control petition was let out to the respondent on a monthly rental of Rs.85/-, w.e.f. June 1985; that Item No.2 was let out to him on a monthly rental of Rs.60/-, w.e.f. August 1986 and that the rents in relation to the scheduled rooms are in arrears ever after 15.11.1987. The

respondent/tenant contended that there is only one entrustment, which takes in both the rooms and that the rental is only at the rate of Rs.85/- per month.

2. The Rent Control Court found that the respondent kept rents in arrears at the rate of Rs.85/- per month for Item No.1 building and at the rate of Rs.60/- per month for Item No.2 building from 15.11.1987 onwards and allowed eviction as claimed under Section 11(2)(b) of the Act. The respondent challenged the order of eviction in R.C.A.No.54/96 before the Rent Control Appellate Authority, Kozhikode. The appellate authority allowed the appeal in part, confirming the order of eviction passed under Section 11(2)(b) of the Act, but, however, making it clear that the tenant is liable to pay rent only at the rate of Rs.85/- per month for both the items scheduled to the rent control petition, as there is only one entrustment in respect of those buildings and not rents at the

rate of Rs.85/- per month for Item No.1 and at the rate of Rs.60/- per month for Item No.2, as alleged, which would make a total rent of Rs.145/- per month for both the items. It is said finding that is assailed by the petitioner/landlord in C.R.P.No.1499/99.

3. Exhibit A1 is the rent deed executed by the respondent in favour of the petitioner. It shows that what was rented out to the respondent is one Kolai, two rooms and a lean to, that being the ground floor of a storied building. Exhibit C1 is the commission report obtained in R.C.P.No.165/90, filed by the petitioner against the respondent, which, it is submitted, was later withdrawn with leave to file fresh RCP on the same grounds. Counsel on both sides agree that the plan tallies with the existing lie of the buildings and that it takes in the entire rented tenement in the possession of the respondent. It is case of the petitioner that out of 'A-B-C-D' portion of the

building, the portion on the east of the 'G-H' line is one room being the ground floor of a storied building and that the portion on the west of 'G-H' line is the lean to portion. Description of the scheduled property in Exhibit A1, obviously, takes in the lean to as well. The petitioner has no case that any more extent other than the 'A-B-C-D' portion is in possession of the respondent/tenant. Hence, concurring with the finding arrived at by the appellate authority we hold that what has been rented out to the respondent by the petitioner/ landlord is what has been rented out under Exhibit A1; that it takes in both the items scheduled in the rent control petition and that the rent thereof is only Rs.85/- per month. The said rent has been found concurrently by the authorities below to be in arrears w.e.f. 15.11.1987 onwards and that is not assailed by the respondent/tenant. Hence, concurring with the finding of the appellate authority, we hold that the rent of the scheduled

building is in arrears at the rate of Rs.85/- per month from 15.11.1987 onwards and that the case of entrustment of Item No.2 on a subsequent date for an additional rent of Rs.60/- per month, as contended by the petitioner/landlord, is not true. Therefore,C.R.P.No.1499/99 filed by the petitioner/ landlord disputing the rate of rent deserves to be dismissed.

4. **C.R.P.No.184/02** arises out of R.C.P.No.70/92 filed by the petitioner against the respondent seeking eviction under Sections 11(3) and 11(4)(ii) of the Act. The claim under Section 11(3) of the Act was advanced on the ground that the building is required for his dependent son to start business in chemicals. The need was found to be bona fide and eviction was allowed by the Rent Control Court. On the ground falling under Section 11(4)(ii) of the Act also eviction was ordered by the Rent Control Court. The respondent challenged the eviction so ordered in R.C.A.No.52/98 before the appellate

authority. The appellate authority reversed the finding of the Rent Control Court both under Sections 11(3) and 11(4)(ii) of the Act and dismissed the rent control petition. The landlord has preferred this revision challenging the said findings.

5. At the time of the argument, it is submitted that the need for the scheduled building advanced for the dependent son of the petitioner no longer exists, as he got employment in Kerala State Financial Enterprises and that, therefore, what remains for consideration is the claim for eviction under Section 11(4)(ii) of the Act. For the sake of reference, Section 11(4)(ii) of the Act is extracted hereunder:

> "if the tenant uses the building in such a manner as to destroy or reduce its value or utility materially and permanently."

6. The question to be considered is as to whether the respondent/tenant has used the building in such a manner as to destroy and reduce its value and utility materially and permanently. Exhibit C1 commission report shows that the separation wall that existed on the 'G-H' line in the plan submitted by the Commissioner along with Exhibit C1 has been demolished and removed by the respondent and in its place a wooden beam is provided giving a support thereto using an iron pillar in the middle, shown as 'P3' in the plan. According to the respondent, the said wall was in a dilapidated condition and therefore, he was giving a strong support by providing the beam and that has only added to the value of the building and has not caused any deterioration to the building or its utility.

7. It is worthy to note that the 'B-C-G-H' portion of the building is a portion in the ground floor of a storied building, whereas, the 'A-G-H-D'

portion is only a lean to attached to the said ground floor room of the building. Naturally, therefore, the wall on the 'G-H' line is to provide support to the upstairs as well. In the absence of that wall, the upstair portion of the building has to rest only on the support furnished by the walls on the other three sides only. The apparent support by a wooden beam, supported by an iron pillar only, is not a substitute to provide sufficient support in the place of wall of the building that had been demolished. The contention of the respondent/ tenant that he demolished and removed the said wall, because it was in a dilapidated condition, cannot be believed for a moment, as it is not his case that the building occupied by him in the ground floor is old and dilapidated. The western wall alone cannot get deteriorated. Further, there is no communication given by the respondent to the petitioner that the wall is in a dilapidated condition. The respondent has also not obtained

permission from the Accommodation Controller to have the said wall demolished and removed and to have support provided with a wooden beam only for the upstair portion of the building and to connect the lean to also with the ground floor portion of the building to suit his convenience. To deprive support to one of the walls of the upstair portion of the building by demolishing the wall beneath on one side cannot, but, be said to be waste of a substantial nature, so as to destroy and reduce its value and utility materially and permanently. Exhibit C1 report further shows that cracks had been developed on the floor of the upstair portion of the building and on the walls, where the wooden beam had been inserted at the 'G-H' points. The further contention of the tenant that the said works were done by the landlord himself has been rightly found against by the Rent Control Court, especially when the landlord and the tenant were not on good terms. The said finding was being

reversed by the appellate authority without any factual basis or sound reasoning. The approach made by the appellate authority to come to the conclusion that removal of the separation wall, which supports the upstairs, is not of such a nature so as to reduce its value and utility materially and permanently, cannot be supported, even for a moment, in view of what we have discussed above.

8. It has been held by the Apex Court in **Manmohan Das Shah v. Bishun Das** (AIR 1967 SC 643) that the question whether there was material alteration depends on the facts and circumstances of each case and that the alteration, which has the effect of altering the form and structure of the premises would be material alteration. It is also true that removal of shutters by a tenant under a claim of right declared by a competent court cannot be deeded to be an act of waste committed to impair the value or utility of the building.

9. Decisions reported in **Ahammad Kanna v. Muhammed Haneef** (1967 KLT 841), **Shanmugam v. Rao Saheb** (1988 (1) KLT 86) and **Seethalakshmi Ammal v. Nabeesath Beevi** (2003 (1) KLT 391) were relied on by the counsel for the respondent/tenant to contend that the alterations effected will not tantamount to any material alteration so as to affect the value and utility of the building materially and permanently.

10. On a perusal of the judgments cited above, we are convinced that the circumstances in this case, whereby support to the upstair portion of the building has been deprived of by demolition of wall on one side of the room in the ground floor, is nothing, but alteration and destruction of such a nature as to destroy and reduce the value and utility of the building materially and permanently, as the upstair portion of a storied building cannot be effectively supported by the wooden beam substituted in its place, supported by an iron

pillar. We, therefore, find that eviction ordered by the Rent Control Court under Section 11(4)(ii) of the Act deserves to be restored reversing the finding of the appellate authority, as regards the claim for eviction under Section 11(4)(ii) of the Act. The claim under Section 11(3) of the Act was rightly being rejected, as the son of the petitioner, who was in need of the scheduled building for his business, has got appointment in the Kerala State Financial Enterprises. C.R.P. No.184/02, therefore, deserves to be allowed in part.

In the result, we dismiss C.R.P.No.1499/99 and allow C.R.P.No.184/02 in part, restoring the order of eviction passed by the Rent Control Court under Section 11(4)(ii) of the Act.

(J.B.Koshy, Judge)

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.Nos.1499/1999 & 184/2002

COMMON ORDER